

**SECTION H****SPECIAL CONTRACT REQUIREMENTS****H-1 SUBCONTRACTING RESTRICTION**

Except as specifically stated in this contract or approved in writing in advance by the Contracting Officer, the Contractor must not subcontract any work under this contract. It is contemplated that approval will be given for subcontracting certain phases of the work when, in the opinion of the U.S. Marshals Service, such subcontracting will not adversely affect the quality of delivery of services nor the difficulty or cost of inspection and testing. All requests for approval to subcontract must be submitted in writing to the Contracting Officer for consideration and approval.

**H-2 INDEMNIFICATION**

- (a) *Hold Harmless and Indemnification Agreement:* The Contractor shall save and hold harmless and indemnify the Government against any and all liability claims, and reasonable costs of any person or persons and for loss or damage to any Contractor or property owned by a third party occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation, or performance of work under the terms of this contract, resulting in whole or in part from the negligent acts or negligent omissions of the Contractor, any subcontract, or any employee, agent, or representative of the Contractor or subcontractor.
- (b) *Government's Right of Recovery:* Nothing in the above paragraphs shall be considered to preclude the Government from receiving the benefits of any insurance the Contractor may carry which provides for the indemnification of any loss or destruction of, or damage to property in the custody and care of the Contractor, where such loss, destruction or damage is to Government property. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss, destruction of, or damage to Government property, and upon request of the Contracting Officer shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including assistance in the prosecution of suit and the execution of instructions of assignment in favor of the Government, in obtaining recovery.

**H-3 REMOVAL OF CSOs AND OTHER CONTRACTOR PERSONNEL**

- (a) The Contractor shall be responsible for providing employees that meet the qualifications and requirements established under the Contract. Any employee provided by the Contractor that fails to meet the requirements of the Contract, including but not limited to, the terms, conditions, performance, medical, and physical standards outlined in Section C, Description/Specifications/Statement of Work, may be removed from performing services for the Government under this Contract upon written request of the Contracting Officer.
- (b) The United States Marshals Service reserves the right at all times to determine the suitability of any Contractor employee to serve as a CSO. Decisions rendered under any dispute resolution process, including assisted settlement, negotiation, consultation, mediation, mini trials, arbitration or any other process available to the contractor and its employees shall not be binding upon the United States Marshals Service. Any decision to continue a Contractor employee in a CSO capacity will be made solely by the Judicial Protective Services Program on a case-by-case basis in accordance with the requirement to safeguard the federal judicial process, the Judiciary, citizens, and property as per policies and directives governing Judicial Protective Services operations.
- (c) Any employee provided by the Contractor that the Contracting Officer asserts has failed to meet the performance requirements set forth in Section C, Description/Specifications/Statement of Work, may be removed from performing services under this contract. The United States Marshals Service reserves the right to temporarily revoke any special deputation granted to the individual CSO under investigation for an alleged serious performance standard violation or criminal charge. Such revocation will also revoke the individual's right to carry a firearm and credential until the alleged incident is resolved. A determination by the Contractor that an employee's performance can be corrected by discipline and/or other measures and still meet the terms of the contract shall be made in writing to the Contracting Officer. The Contracting Officer and Judicial Protective Services shall make the final determination of suitability. In the event that an employee consistently fails to perform following notification by the Contracting Officer, the Contractor may be assessed liquidated damages. Liquidated damages shall be computed for each affected employee as outlined in Section F-1, *Liquidated Damages - Supplies, Services or Research and Development*.

- (d) When deemed necessary and if requested by the Contracting Officer or a designated representative, the Contractor shall provide a written explanation to the Contracting Officer, providing the facts and argument regarding the proposed removal of an individual. In the event that the Contracting Officer or designated representative has requested the removal, a written response from the individual subject to the removal, if any, and a written statement of the Contractor's position on the removal of an individual must be forwarded to the Judicial Protective Services, through the Contracting Officer, within 15 days of the initial removal notice for a final decision.
- (e) Notwithstanding the requirements of Paragraph (b), above, any employee provided by the Contractor that engages in actions such as misuse of weapons or credential that have been provided, removal of assigned weapons or credential from the courthouse/site, improper activity related to a jury, or engages in criminal conduct, whether on or off-duty, or any other activity that affects the integrity of the judicial process or is likely to compromise the security of the courts, shall be removed from performing services for the Government under this contract, and shall not be reassigned to this contract without the concurrence of the Contracting Officer. The Contractor shall notify its employees of this requirement and shall post this requirement in a conspicuous location.
- (f) The Contractor shall be required to submit with its proposal established procedures for disciplining employees who fail to comply with the terms of the contract. The Contractor's disciplinary procedures must provide, at a minimum, notice to the employee of any allegation(s) made concerning the employee's performance, and an opportunity for the employee to respond. In no event shall an employee be removed permanently from performing services under this contract without being provided the requisite notice and opportunity to respond.
- (g) The Contracting Officer shall forward copies of all correspondence pertaining to the removal of the contractor's employees to the COTR responsible for overseeing contractor performance in each district.
- (h) The procedures of Section H-3 do not apply to situations where a CSO is removed for failure to meet the contract's medical and/or physical qualification standards and/or firearms qualifications.

**H-4 INSURANCE COVERAGE**

- (a) The Contractor must acquire and maintain at his expense during the entire contract performance period adequate insurance. Insurance coverage must, at minimum, provide the following:
- (1) \$100,000 per incident minimum Workman's Compensation and Employee's Liability Insurance.
  - (2) General public liability insurance covering all duties, services, and work to be performed under this contract. The insurance provides limits of liability for bodily injury not less than \$2,000,000 per person and \$5,000,000 for each occurrence, and property damage limits of liability of not less than \$200,000 for each accident. The general liability policy must name the "The United States of America, action by and through the Department of Justice," as an additional insured with respect to operations performed under this contract.
  - (3) Automobile Liability Insurance written on the comprehensive form of policy of \$1,000,000 per person and \$5,000,000 per occurrence for bodily injury, and \$200,000 per occurrence for property damage.
- (b) Each liability policy must include the following provision:
- "It is a condition of this policy that the company shall furnish written notice to the Department of Justice, in care of the issuing office, 30 days in advance of any reduction in or cancellation of this policy."
- (c) Insurance is to be effective throughout the term of the contract. Upon request, the Contractor must furnish the Contracting Officer as evidence of requirement insurance, certified true copies of liability policies and manually countersigned endorsements of any changes thereto. Renewal policies must be furnished not less than five days prior to the expiration of current policies.

**H-5 LICENSES**

The Contractor must secure and maintain in a current status all required licenses and permits applicable to the lawful functioning within the locations listed in Section B, Supplies or Services and Prices / Costs. In doing so, the Contractor

must furnish evidence to the Contracting Officer, of a company license (state and/or local) authorizing the company to provide guard service within that state and/or locality, or evidence of application for same, within 14 days after request by the Contracting Officer.

#### **H-6 FACILITY SURVEY PRIOR TO ASSUMING/COMMENCING CONTRACT PERFORMANCE**

After the award, but prior to performance, the Contractor must coordinate a facility survey with the COTR for purposes of familiarizing each Contractor personnel with the CSO post assignment records and the Judicial Security Plan designed specifically for that facility. A facility survey must also be performed on the first day of duty for each Contractor personnel hired after implementation of the contract.

#### **H-7 RECORDING PRESENCE**

All Contractor personnel performing work at a USMS site must sign in when reporting for duty and sign out when leaving at the end of the work day on a "Record of Time of Arrival and Departure," form. This form will be provided and secured at an area designated by the COTR.

#### **H-8 WAGE DETERMINATIONS**

- (a) Wage determinations, as reflected in Section J, Attachment 1(A), *Applicable Department of Labor Wage Determinations and Collective Bargaining Agreements*, are applicable to employees who will be employed in the performance of this contract. Contractor employees assigned to labor categories listed in the wage determination must be paid no less than the minimum monetary wage and furnished fringe benefits as indicated in the wage determination. The Contractor must immediately pay these employees the minimum wages and fringe benefits upon receipt of the applicable wage determination. This determination was issued under the provisions of the McNamara-O'Hara Service Contract Act (79 Stat. 1034), and in accordance with Part 4-3 of 29 CFR Part 4.
- (b) Wage determinations, as reflected in Section J, Attachment 1(A), *Applicable Department of Labor Wage Determinations and Collective Bargaining Agreements*, are applicable to employees who will be employed as a CSO during the performance of this contract.

**H-9 LIABILITY FOR START-UP COSTS**

- (a) Liability for Background Investigations Costs During Contract Start-Up - During the contract transition phase only, the Contractor will be responsible for the costs of background investigations for all non-incumbent CSO applicants in the amount of \$1,895.00, unless the Contractor can substantiate that an offer for employment was made to an incumbent CSO and that offer was rejected. The Government will assess the amount from the Contractor's invoice. The amount of \$1,895.00 represents the additional costs of the Government performing background checks on a new applicant.
- (b) Start-Up Cost - The Government will only be liable for actual start-up costs incurred by the Contractor. (For example, if the Contractor does not provide a set of uniforms to a CSO during a contract performance year, then the Government will not be liable to reimburse the Contractor for uniform start-up costs).

The Government will not reimburse the Contractor for start-up costs associated with hiring individuals in excess of the number of personnel required for the CSO positions authorized in Section B, Supplies or Services and Prices / Costs, or subsequent positions authorized by the Contracting Officer. Additionally, the Government will not be liable for start-up costs caused by turnover of contractor employees or when previously approved CSOs fail either preliminary or background investigations, except those specific cases set forth in Section C-30, *Turnover*.

**H-10 QUANTITIES FOR MINIMUM AND MAXIMUMS**

- (a) For the purpose of determining the contract minimum guarantee as described below, the number of CSO positions must be the number of positions specified on the Specification and Pricing Proposal Sheet. ***Neither LSSO nor SSO positions are included in the contract minimum guarantee calculations.*** A position equates to a CSO working a 40-hour work week. The Government guarantees that a minimum amount of work will be ordered under this contract. The cost of the minimum guarantee will be determined by the Specification and Pricing Proposal Sheet for the basic contract period and must include subsequent changes for option years. The amounts must be determined as indicated in the following paragraphs.
- (b) For the basic contract period, the minimum guarantee will be computed by multiplying the basic hourly rate for each location, by the number of CSO positions for each location, multiplied by 174 estimated average hours per

month, multiplied by four months. This guarantee is subject to the availability of funds.

- (c) If there are less than four calendar months remaining between the date of the award and the end of the Government's fiscal year in which the award is being made, then the minimum guarantee is to be calculated with the lesser number of months and the resultant shortfall from the amount calculated using four months may be subsequently provided subject to the availability of appropriated funds for performance beyond the end of the fiscal year. (The Government's fiscal year ends on September 30 of each year.)
- (d) The estimated dollar value of the minimum guarantee for any option period, if exercised, will be determined in the same manner as for the initial contract period, except that the number of CSO positions used in the calculation will be equal to the number of CSO positions required to be covered under the contract pursuant to task orders in effect; (1) at the time that the Government provides the preliminary notice of intent to exercise the option, or (2) immediately preceding the option period, whichever is later.
- (e) For the purpose of determining the contract maximum for the initial year, the number of CSO positions will be increased by 100% of the number of positions specified on the Specification and Pricing Proposal Sheet. For subsequent years the contract maximum is increased by 100% over the maximum number of CSO positions actually in place at any one time during the prior year of the contract performance. For start-up services, the amount can be increased unilaterally by the Government by up to 100% percent over the solicitation estimate, and may be bilaterally increased beyond that point to meet fluctuations in the Government's security requirements, provided the Contractor agrees to a higher percentage.

#### **H-11 DEPARTMENT OF JUSTICE DEADLY FORCE POLICY**

The Contractor must ensure that its employees fully comprehend and comply with Section J, Attachment 4(A), *Department of Justice Deadly Force Policy*.

#### **H-12 NOTICE REGARDING FIREARM POSSESSION/DOMESTIC VIOLENCE**

Title 18, Section 922(g)(9) of the United States Code makes it a federal felony for anyone previously convicted of a misdemeanor crime of domestic violence to possess a firearm or ammunition. "Misdemeanor crime of domestic violence" is generally defined as any offense whether or not explicitly described in a statute as a crime of domestic violence which has as its factual basis the use or attempted use

of physical force, or the threatened use of a deadly weapon, committed by the victim's current or former domestic partner, parent or guardian. A person falls under the prohibition of the statute if he or she has ever been convicted of a misdemeanor crime of domestic violence. The term "convicted" is generally defined in the statute as excluding anyone whose conviction has been expunged, set aside or has received a pardon.

### ***H-13 NOTICE REGARDING BLOOD BORNE/AIR BORNE PATHOGENS EXPOSURE***

- (a) The Contractor is hereby provided notice that there is risk of occupational exposure to potentially infectious materials for their employees under this contract. It is the Contractor's responsibility to inform its employees of this risk.
- (b) The Contractor must formally document the acknowledgment of their employees that they have been made aware of the associated risks and that the Contractor is responsible for ensuring that they take self-protective measures whenever they are subject to such exposure.
- (c) The Contractor must ensure that their employees are made aware that they should not be handling prisoners or accessing cellblock areas on a routine basis as this is not a requirement of the contract and puts the employee at a high level of risk of infection.
- (d) Any cost to the Contractor associated with their compliance to this portion of the contract is the responsibility of the Contractor.

### ***H-14 KEY PERSONNEL***

- (a) The Contractor must assign a contract managers and site supervisors to key positions. These individuals are considered essential for the work required. The Contractor must not make a diversion or substitution of any key personnel without the written consent of the Contracting Officer.
- (b) During the first 90 days of performance, no substitution of key personnel will be allowed unless the substitution is necessitated by illness, death, or termination of employment. In any of these events, the Contractor must notify the Contracting Officer within 72 hours of knowledge by the Contractor and provide the information required by paragraph (c) below. After the initial 90-day period, all proposed substitutions must be submitted in writing to the Contracting Officer for approval.



- (c) All requests for substitutions must provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. The qualifications of any proposed substitutes must meet or exceed the contract requirements. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. This paragraph may be modified to reflect any approved changes of key personnel.